



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/727,134
Applicant : Wolters, Norbert et al.
Filed : 30 Nov. 2000
Art Unit : 3671
Examiner: : Arpad Kovacs

Docket (atty ref.) No. : 8874-US

Title: Row-Insensitive Gathering Device for An Agricultural Header

Moline, IL 61265

31 August 2006

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria VA 22313-1450

Pre-Appeal Brief Request for Interview

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

The request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the succeeding page(s). No more than five (5) pages of reasons have been provided.

I am an attorney or agent acting under 37 CFR 1.34. My registration number is 36,235.

Reasons

Claims 1-13, 15 and 17-24 are pending in the present application. Claims 8-13, 15 and 17-19 are allowed. Claims 1-7 and 20-24 are rejected.

In the Final Office Action of June 20, 2006, the examiner objected to Claim 8 because it said "rotating ... element" and not "**the** rotating... element". This objection has been overcome by an amendment after final already transmitted to the USPTO.

There are four independent claims, claims 1, 2, 8, and 20.

Claims 1, 2, 8, and 20 recite:

... a **rotating feeding element** that is **rotated in a circle about a vertical axis** and comprises a **body with outwardly extending fingers**, the rotating feeding element **grasps plant stalks** and directs the plant stalks to the **picking device which separates useable parts from plant stalks**

Claims 1, 8, and 20 recite:

... **the feeding element is designed to transport the plant throughout the effective length of the picking device**

Claim 2 similarly recites:

... **the feeding element is designed to support the plant stalk while it is being processed by the picking device**

Claims 1, 2, and 20 recite:

the picking device is provided with an inlet ... located in front of the vertical axis of the feeding element

In a preferred embodiment of the present invention, there are two rotating feeding elements 14, 16, each in the form of a wheel with fingers extending therefrom. See

the first two paragraphs of the Detailed Description and Figure 1. The axes about which these wheels rotate is behind and to the side of the stalk rolls. The stalk rolls themselves are a preferred embodiment of the claimed picking device.

On Page 3 of the Final Office Action, the Examiner states that the catches 20 on the Wiegert gathering chains 18, 19 read on the claimed rotating feeding elements of claims 1, 2, 8, 20, saying:

... a rotating feeding element rotated about a vertical axis in a circle comprising a body with outwardly extending fingers (fig 4, ref 20 [of Wiegert]); ...

This is wrong. The BPAI (App. No. 2005-1973) in its Decision on Appeal (mailed 02-11-2005) held that the Wiegert gathering chains 18, 19 which support catches 20, do not read on the rotating feed element limitation, and reversed the Examiner's rejection of the claims based on Wiegert alone.

The gathering chains 18, 19, with or without catches 20 do not meet the limitations of the "rotating feeding element". They do not rotate "in a circle" they do not constitute "a body with outwardly extending fingers", and they do not "grasp" the plant stalks.

The Examiner finds in the Wiegert reference the teaching to replace the Wiegert gathering chains 18, 19 and catches 20 with the Thompson and Pottinger gathering devices. The Examiner says Wiegert "discloses... the fact that the **feeding element** can be substituted by any other known devices" (Page 4, Final Office Action).

This is wrong. Wiegert does not teach substitutions for the feeding element (i.e. equivalents to the gathering chains 18, 19 and catches 20). instead, Wiegert teaches substitutions for the chopper, a different device.

Wiegert says that "the **chopper**... has **rotating blades 22** but it can have **any other suitable design** as well." Further, the Wiegert US equivalent (USPN 6,412,259) says "the **chopper** shown has **rotating blades 22**, however,...it may also have **any different construction**" (Wiegert, col. 2, lines 33-38)

Wiegert is speaking about equivalents to the chopper, an entirely different structure. The Examiner does not call the chopper a "feeding element". The Examiner calls catches 20 of chains 18, 19 a "feeding element".. So any Wiegert teaching of equivalents to Wiegert chopper 22 is moot.

Thus there is no teaching to replace Wiegert's gathering chains and catches 20 with anything from Thompson and Pottinger. Yet the Examiner says to replace the Wiegert chains and catches 20 with Thompson's feeder units 31 (which include fingers 37 mounted on rotating shafts 32). However, even if we make this substitution, we still do not wind up with a device that reads on the independent claims.

First, the Thompson feeder units 31 do not **"support the plant stalk while it is being processed by the picking device"** (claim 2) or **"transport the plant throughout the effective length of the picking device"** (claims 1, 8, 20). Thompson's feeder units 31 are disposed well forward of Thompson's shredder cylinders 23 and have no contact with the plant while it is uprooted from the ground and processed. Thompson's theater units 31 are too far forward to support the plant stalk or transport the plant for additional processing (i.e. Thompson's shredder cylinders 23). Even further, since the Thompson system does not have a picking device that "separates usable parts from plant stalks" Thompson teaches nothing regarding the suitability of his feeding devices or their proper location with respect to a "picking device". Since Wiegert is silent on any alternatives to his gathering chain 18, 19 and catches 20, Wiegert provides no anticipatory teaching.

Second, the Thompson **"picking device" does not have "an inlet ... located in front of the vertical axis of the feeding element"** (claims 1, 2, and 20). Again, Thompson teaches placing his feeder units 31 well in front of his shredder cylinders 23. See the discussion in the paragraph above regarding the location of Thompson's feeder units 31.

Thus, even if we substitute the Thompson feeder units 31 for the Wiegert gathering chains 18,19 and catches 20, we still do not have a device that reads on independent Claims 1, 2 , 8 and 20.

The situation is no better with the Pottinger device. Pottinger neither describes or discloses what further processing is done to the plants once they are separated from the ground. All the independent claims 1, 2, 8, 20 recite a picking device that **"separates useable parts from the plant stalks."** In Pottinger no such picking device exists. The Pottinger system has pick-up wheels 1,2 with tines 10 that direct the plant stalks over cutting discs 8, 9. The cutting disks 8, 9 cut the corn stalk off at the root. The pickup wheels 1, 2 carry the cut off corn stalk into and through the cutting wheels 8, 9 and sends them backward out of the Pottinger machine.

Since nothing in Pottinger **"separates usable parts from the plant stalks"**, Pottinger does not teach a **"feeding element [] designed to transport the plant throughout the effective length of the picking device"** (claims 1, 8, 20).

For the same reason, Pottinger does not teach a **"feeding element [] designed to support the plant stalk while it is being processed by the picking device"** (claim 2).

For the same reason, Pottinger does not teach up **"picking device [] provided with an inlet ... located in front of the vertical axis of the feeding element"** (claims 1, 2, 20) -- or expressed alternatively, "a feeding element with a vertical axis located behind an inlet of the picking device".

In conclusion, Wiegert does not disclose a feeding element according to any of the independent claims in the present invention. Furthermore, Wiegert does not teach the use of an alternative feeding element. Furthermore, even if Wiegert did teach an alternative feeding element, neither of the Thompson and Pottinger references cited by the Examiner read on any of the independent claims when substituted for the allegedly feeding element of Wiegert.

Finally, and with regard to claims 22, 23, and 24, neither Wiegert nor Thompson, nor Pottinger disclose a "picking device [that] comprises two stalk rolls having forward ends, and further wherein the axis [of rotation of the feeding element] is located behind and to the side of the two forwards stalk roll ends." See the discussions above

regarding the location of Thompson's feeder units 31 forward of his shredder rolls 23 and Pottinger's pickup wheels 1, 2 forward of his nonexistent "picking device".

For at least these reasons, the Applicants request that all the independent claims of the application be allowed. Furthermore, the Applicants ask that all the claims dependent upon these independent claims also be allowed.

Respectfully submitted ,

signed: /Stephen M Patton #36,235/

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on 31 August 2006 Date
Signature Jaime Neukirk Date 31 August 2006
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